

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VIDAL MAURICE WHITLEY,

Plaintiff,

v.

NURSE ADRIAN BOWDEN, *et al.*,

Defendants.

No. 17-CV-3564 (KMK)

ORDER ADOPTING R&R

KENNETH M. KARAS, District Judge:

Vidal M. Whitley (“Plaintiff”) filed the instant pro se Action, pursuant to 42 U.S.C. § 1983, against Nurse Adrian Bowden, Lieutenant Orazio Bucolo, Office of Mental Health (“OMH”) Unit Chief Hennesy, OMH Psychiatrist Megan Wright, and Prison Doctor Robert Bentivegna (collectively, “Defendants”), alleging violation of his Eighth and Fourteenth Amendment rights. (Compl. (Dkt. No. 1).) On March 11, 2019, Defendants filed a Motion To Dismiss (the “Motion”) for failure to participate in discovery and otherwise prosecute this Action. (Dkt. Nos. 73, 74.) Plaintiff opposed the Motion. (Dkt. No. 77.)

On April 4, 2019, Magistrate Judge Lisa M. Smith issued a Report & Recommendation (“R&R”) recommending denial of Defendants’ Motion without prejudice. (R&R 13 (Dkt. No. 79).)

No objections or requests for an extension have been filed and the deadline for objections has passed. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). A district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where no objections are made, a district court reviews an R&R only for clear error. *See Folk v. Barton*, No. 15-CV-6443, 2017 WL 2191620, at *1 (S.D.N.Y.

May 17, 2017) (reviewing R&R on motion to dismiss for failure to prosecute, to which no objections were made, for clear error); *McNair v. Rivera*, No. 12-CV-7055, 2013 WL 5718444, at *1 (S.D.N.Y. Oct. 21, 2013) (same). Clear error is found only when, upon review of the entire record, the Court is left with “the definite and firm conviction that a mistake has been committed.” *Laster v. Mancini*, No. 07-CV-8265, 2013 WL 5405468, at *2 (S.D.N.Y. Sept. 25, 2013) (quoting *United States v. Snow*, 462 F.3d 55, 72 (2d Cir. 2006)). Having reviewed the thorough and persuasive R&R for clear error and finding none, the Court adopts the R&R in its entirety. Accordingly, Defendants’ Motion is denied without prejudice to renew in the event of any future failure by Plaintiff to prosecute this Action.

The Clerk of the Court is respectfully requested to terminate the pending motion, (Dkt. No. 73), and to mail a copy of this Opinion to Plaintiff.

SO ORDERED.

Dated: April 30, 2019
White Plains, New York



KENNETH M. KARAS
UNITED STATES DISTRICT JUDGE